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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,334	10/03/2003	Sung Bok Ko	1594.1269	8808

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STAAS & HALSEY LLP  
SUITE 700  
1201 NEW YORK AVENUE, N.W.  
WASHINGTON, DC 20005

EXAMINER

JIANG, CHEN WEN

ART UNIT PAPER NUMBER

3744

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/677,334

Applicant(s)

KO ET AL.

Examiner

Chen-Wen Jiang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9,13,14 and 17 is/are rejected.
- 7) ☒ Claim(s) 2-8,10-12,15,16 and 18-24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Frohbieter (U.S. Patent Number 4,732,014).

Frohbieter discloses a temperature-controlled compartment for a refrigerator. Referring to Figs. 1-6, the refrigerator comprises a refrigerator compartment 14, a freezer compartment 16 and a temperature-controlled compartment 24. The temperature-controlled compartment 24 communicates with the freezer compartment 16 through two conduits 26 and 28 and a fan 71.

3. Claims 1, 13, 14 and 17 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Zentner et al. (U.S. Patent Number 6,802,369).

Zentner et al. disclose a refrigerator having quick chill and thaw control method and apparatus. Referring to Figs. 1 and 5, the refrigerator comprises a variable temperature storage chamber 122, a first path inflow thru damper 260, 302, supply path 252, from freezer into chamber 122, a second path thru return path 254, damper 260 to freezer compartment,

temperature sensors in the re-circulation path 256 and/or return path 254, fan 274,306 and dampers 260,266. The dampers 266,312 control the third and fourth flow paths.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frohbieter (U.S. Patent Number 4,732,014) in view of Peterson et al. (U.S. Patent Number 5,899,083).

Frohbieter discloses the invention substantially as claimed. The temperature-controlled compartment comprises a rear insulation, lower insulation, front insulation and side insulation walls. However, Frohbieter does not disclose the temperature-controlled compartment insulated on top wall. Peterson et al. disclose each compartment can be individual insulated in the same field of endeavor for the purpose of maintain temperature. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the

apparatus of Frohbieter with a insulated walls in view of Peterson et al. so as to maintain desired temperature.

6. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frohbieter (U.S. Patent Number 4,732,014) in view of Nonaka (U.S. Patent Number 4,689,966). Frohbieter discloses a temperature-controlled compartment for a refrigerator. Referring to Figs. 1-6, the refrigerator comprises a refrigerator compartment 14, a freezer compartment 16 and a temperature-controlled compartment 24. The temperature-controlled compartment 24 communicates with the freezer compartment 16 through two conduits 26 and 28 and a fan 71. However, Frohbieter does not disclose open/close ports. Nonaka discloses using dampers in the same field of endeavor for the purpose of controlling flow. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Frohbieter with a damper in view of Nonaka so as to control the temperature. Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *Ir re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

#### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

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F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1,9,13,14 and 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 10/670,263. Although the conflicting claims are not identical, they are not patentably distinct from each other because freezer compartment, refrigerator compartment, temperature-controlled compartment, cool air inlet/outlet, insulated temperature-controlled compartment are claimed in both applications.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### *Allowable Subject Matter*

9. Claims 2-8,10-12,15,16 and 18-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Frohbieter (U.S. Patent Number 4,732,009) is made of record as relevant prior art.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (571) 272-4809.

The examiner can normally be reached on Monday-Thursday from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang  
Primary Examiner

